

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, NC 27605

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DEC 1 - 1997

December 1, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Facsimile

Ms. Magalie Romas Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Stop Code - 1170
Washington, D.C. 20554

Re: MM Docket 97-182

Dear Ms. Salas:

Transmitted herewith are an original and four copies of the reply comments of Capitol Broadcasting Company, Inc., in connection with the above-referenced matter.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Very truly yours,



Michael D. Hill
General Counsel

MDH/vm
Enclosure

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Preemption of State and Local Zoning and)	MM Docket No. 97-182
Land Use Restrictions on the Siting,)	
Placement and Construction of Broadcast)	
Station Transmission Facilities)	

REPLY COMMENTS OF CAPITOL BROADCASTING COMPANY

Capitol Broadcasting Company ("Capitol"), by and through its undersigned attorney, and pursuant to 47 C.F.R. §§ 1.415, 1.419, hereby respectfully submits these reply comments in connection with the *Notice of Proposed Rule Making*, FCC 97-296, released August 19, 1997, issued in the above-captioned proceeding.

The purpose of these reply comments is to inform the Commission of events which have occurred subsequent to the filing of the comments in this proceeding. Certain matters relating to Capitol's efforts to obtain the approval of the City of Raleigh to relocate a studio-transmitter link tower on Capitol's studio premises were set forth in the Comments of the Joint Comments of the North Carolina Association of Broadcasters and the Virginia Association of Broadcasters. Subsequent to the submission of those comments, the City of Raleigh has approved Capitol's permit request. Moreover, attached hereto is a copy of a letter from the attorney for several of the individual council members explaining the reasons for his clients' actions with respect to Capitol's application.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Respectfully submitted, this 1st day of December 1, 1997.

CAPITOL BROADCASTING COMPANY, INC.

By:

Michael D. Hill

Michael Hill
General Counsel

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November 14, 1997

Mr. Michael D. Hill,
General Counsel
Capitol Broadcasting Company, Inc.
P. O. Box 12000
Raleigh, North Carolina 27606

Re: Capitol Broadcasting Co. Application for Special Use Permit

Dear Mike:

This is to confirm our understanding between your client, Capitol Broadcasting, and the other Plaintiffs in the litigation, and my clients, pending in the Court of Appeals. It appears we cannot reasonably expect that case, *"News & Observer Publishing Co., et al v. Coble, Fetzer, Scruggs and Shanahan,"* will be concluded before the late Spring or early Summer, 1998. The matter is scheduled for oral argument in the appellate court on Tuesday, December 2, 1997. Ironically, that is the day the newly elected and re-elected council members and the Mayor will be sworn in.

In the meantime, my clients recognize the business necessities of Capitol Broadcasting and its need to move forward on its Special Use Permit hearing. They have instructed me to try to accommodate all parties - them as defendants and Capitol Broadcasting and the other plaintiffs - in this unique situation.

My clients and I have no interest in inhibiting your client in pursuit of its legal rights in any manner it may be advised. They and I certainly have no interest in controlling how any of the media plaintiffs report the outcome of the Hearing on your client's application, whatever it turns out to be.

My clients' dilemma is they are engaged in serious, expensive and protracted litigation as defending litigants, and simultaneously are being called upon to sit as an impartial majority in a public hearing that has important consequences to one of seven parties suing them. If they or any one of them rule in favor of Capitol Broadcasting, there are those who may say my clients should not have participated in this proceeding at this time. If the ruling is not in favor of Capitol Broadcasting, there are those who may say my clients should not have participated in this proceeding at this time. This obviously is a classic situation of "damned if you do and damned if you don't."

Nevertheless, I am assured by my clients that each is morally certain he can sit as a fair and impartial voting member in this quasi-judicial proceeding. Each has assured himself and me that he can render whatever decision is appropriate under the facts and the law as to Capitol Broadcasting Co. My only request is that each of the other six plaintiffs be fully informed of our

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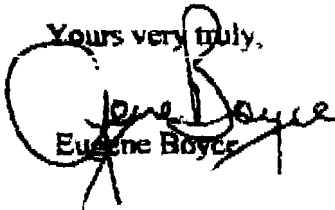
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Mr. Hill
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desire to proceed in this manner prior to the Hearing. What, if anything, anyone wants to make out of the situation, so be it. We just do not want anyone to say what you and I are trying to accomplish is being done secretly, or that any one of my clients is not making a conscientious and reflective decision to proceed to a fair and impartial hearing and decision in order to accommodate your client's pressing needs.

It is my understanding the matter is set on the Agenda for Tuesday, November 18, 1997, as requested.

With best personal regards, I am

Yours very truly,


Eugene Boyce

GEB:ms

cc: Mayor Fetzer
Mayor Pro Tem Coble
Councilman Shanahan
Councilman Scruggs